IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.562 OF 1988

Nasir Yusuf Shaikh)
Age about 29 years, Occupation :)
Service, Residing at N.C.L Colony)
Pashan, Pune.)..Appellant

Versus

The State of Maharashtra)..Respondent

Mrs.Anita A.Agarwal for the Appellant.

Mrs.V.R.Bhosale, APP for the Respondent/State.

Coram : S.S.Parkar &
R.S.Mohite,JJ

Date : 19.08.2004.

Judgment :- (Per : Mohite, J)

1. This is an Appeal filed by the appellant (here-in-after referred to as the accused) seeking to quash and set aside a Judgment and order passed by the Additional Sessions Judge, Pune on 27.05.1988 in Sessions Case No.380/87, convicting him for an offence punishable under Section 302 of the IPC and sentencing him to suffer imprisonment for life.

2. The brief facts of the prosecution case are as under :-

(A) The deceased Lata Jagdish Prasad was the wife of

(PW 15) Jagdish Kishoriram Prasad. Jagdish was residing alongwith Lata and their 3 children in the quarters of National Chemical Laboratories (here-in-after referred to as "NCL") in which organisation he was working. Jagdish used to reside in room no.11 on the ground floor of the building. The elder brother of Jagdish, Sahadeo (PW 11) also used to work for NCL. He alongwith his wife (PW 9) Umitra were residing in room no.10 on the first floor of the very building in which Jagdish was residing with the deceased Lata.

(B) Amongst the children of Jagdish & Lata was their daughter Neelkamal who was 12 years old on the date of the incident i.e. 19.3.1987. Neelkamal was the eldest daughter of Jagdish and Lata. At the relevant time, Neelkamal was studying in the NCL School situated near the library in the campus. On the date of the incident, Neelkamal was studying in the 4th standard. Her school timing was between 7.30 A.M. and 12.30 noon. It was her daily routine to have her meal after returning from school and then studying.

(C) The accused Nasir was known to (PW 15) Jagdish since about 4 years prior to the incident. Jagdish used to bring the accused home and during such

visits, the accused became friendly with Lata. Jagdish started suspecting that there was an illicit relationship which had developed between the accused and his wife Lata. He learnt that the accused used to tell Lata that her husband was having illicit relationship with another lady and in this way the accused was trying to create a strained relationship between Jagdish and Lata. Jagdish warned Lata that they had 3 kids and it was not sensible behaviour to carry on such relationship with the accused. That on his so warning her, his wife Lata completely stopped all relationship with the accused and this angered the accused, resulting in agressive behaviour on his part.

(D) That on the day of holi in the year 1987 the accused came to the house of Jagdish at 1.30 P.M. in a drunken stage and started abusing Lata. Jagdish went to complain about this behaviour of the accused to (PW 3) Mohandas who was working as a Security officer in NCL. The Security officer Mohandas sent his watchman to fetch the accused and the watchman accordingly, brought the accused to (PW 3) Mohandas who warned the accused not to indulge in any such behaviour and that if he continued to do so, a complaint would be lodged with the police against him.

(E) Lata used to conduct her own business of selling Pan, cigarettes and biddis on a wheel-cart in front of the NCL library. Her cart used to be parked on the footpath about 500 yards away from the office of (PW 3) Mohandas.

(F) That on 19.3.1987, (PW 10) Neelkamal had gone to her school at 7.30 A.M. She returned home at about 12.00 in the noon. When she returned home, she found that her mother Lata was not at home and was at her pan shop on the wheel-cart. She, her brother and sister then ate their meals and awaited their father's arrival. However, on that day their father did not come home and therefore, at 1.45 P.M. Neelkamal carried a tiffin-box for her mother to the Pan shop. When she reached the Pan shop, she found that her mother was not present at the Pan shop. It is the prosecution case that at about 1.30 P.M. on that day her mother had left the Pan shop and had gone to the office of the Security officer (PW 3) Mohandas with the complaint that the accused had come to her at about 1.30 P.M. and had quarreled with her. (PW 3) Security officer sent 2 of his watchmen viz. Kadam and Nimbare to trace out the accused and had asked Lata to go back to her wheel-cart, which she had done.

(G) (PW 10) Neelkamal, not finding her mother at the

hand-cart, waited there for about 5 minutes but since her mother did not return, she went to the shop of (PW 12) Sheshrao Waghmare who was a fruit vendor. The fruit vendor told Neelkamal that her mother had a quarrel with the accused and she had gone to complain against the accused in the NCL office. The fruit vendor then took the tiffin box from Neelmakal and told Neelkamal that he would hand over the tiffin box to her mother when she returned. After handing over the tiffin box, Neelkamal then went to drink water in her school.

(H) Immediately after Neelkamal left the hand-cart, the deceased Lata returned after lodging her complaint with (PW 3) Mohandas, Security officer from the NCL office. Neelkamal after drinking water in the school returned to the Pan shop within 10 minutes. She saw the accused coming to the Pan shop on his cycle. She also saw the accused pressing the mouth of her mother and her mother catching-hold the hair and shirt of the accused. She further saw the accused taking out a knife and giving 2 knife blows on the stomach and left arm of her mother. That when this attack took place, the fruit vendor as also some other labourers were present at the spot. As a result of the knife blows struck by the accused, deceased Lata fell down.

(I) After witnessing this incident, Neelkamal was frightened. She turned and ran towards the house of her aunt (PW 9) Umitra. In the house of Umitra, she disclosed to her that the accused Nasir had struck the knife blows on the person of her mother. Umitra pacified Neelkamal and made her sit in her house and immediately left for the place where the wheel-cart of Lata used to be parked. At that place, she found Lata lying dead with a stab wound on her stomach.

(J) At about 3.00 P.M. (PW 11) Sahadeo, the brother of Jagdish was informed in his office by his Section officer that his sister-in-law Lata has been murdered and he should immediately go to the spot of the incident. Sahadeo rushed to the spot of the incident. He saw huge crowd gathered at the spot. He also saw police gathered on the spot. He saw Lata had lying dead on the pavement near her cart. She was bleeding from her stomach. The police on seeing him, recorded his complaint at the spot of the incident. The contents of this FIR (Ex.23) were proved by the prosecution through this witness. Sahadeo stated that he reached the spot of the incident at about 3.30 P.M. and remained on the said spot till 6.00 P.M. He stated that Jagdish who had gone to a bank, came to the spot at about 4.00 P.M.

(K) (PW 15) Jagdish the husband of the deceased had been to a Co-operative bank near Alka talkies. He returned back to Pashan where the incident had taken place at about 4.00 P.M. When he alighted from the P.M.T. bus stop, he saw the dead body of his wife lying in the pavement and noticed that a panchanama was in progress. He was present when the police removed the dead body of his wife to Sasoon hospital. He had accompanied the dead body to Sasoon hospital. That after the post mortem, he brought back the dead body to his house at about 10.00 P.M. He met his daughter Neelkamal at 10.30 P.M. The funeral of the dead body was performed on the same night and all the family members returned home at 1.00 A.M. and thereafter, he had a talk with Neelkamal at 2.00 A.M. on the night of the incident.

(L) During the post mortem, (PW 17) Dr.Laxman Pherwani noticed 2 incised wounds on the dead body of Lata. These wounds were as follows :-

(i) An incised wound 3/4" x 1/4" present on the right side of abdomen 3" away from the umbilicus, oblique in direction- ante mortem clots present.

(ii) An incised wound 1 x 1/4 x 1/4

inches present on the left arm upper aspect, frontal region.

. He noticed that both the injuries were ante mortem. On internal examination, he found that the sub-cutanous tissues and muscles were cut at the place of the external injuries, the peritonium and the abdominal cavities were full of blood. The mesentry was cut at 2 places. He opined that the cause of death was traumatic and haemorrhagic shock due to stab injury on abdomen. In his substantial evidence, he opined that external injury no.1 coupled with the internal injury was sufficient to cause death in an ordinary course.

(M) (PW 19) Pargounda Appasaheb Patil was attached to Chatushringi police station as a Police inspector. On 19.3.1987 he was informed by the PSO of his police station about the present incident. He rushed to the spot of the incident in front of NCL library. He saw the dead body of Lata having stab injuries on her person, lying in front of the wheel-cart. He noticed (PW 11) Sahadeo at the spot and he recorded his statement which was treated as the FIR (Ex.23). He returned back and registered an offence under Section 302 of IPC and commenced his investigation. He sent the Constables attached to the detection branch to trace the accused Nasir. He

conducted an inquest panchanama on the dead body of Lata and noted therein the two stab injuries on the stomach and left shoulder. He noticed some hand written pages tucked under the brassier of the deceased women. He attached that chit under the panchanama. The inquest panchanama was then signed by this witness and 2 panchas. This witness proved his signature and the truth of the contents of the inquest panchanama (Ex.12). He then attached sample tar mixed with blood as also plain tar from the pavement and also collected pieces of bangles and pair of chappals (articles-5 & 6 respectively) from the spot of the offence. On the same day, he recorded the statement of (PW 3) Mohandas amongst 10 others. He recorded the statement of (PW 12) Sahadeo who was the fruit vendor and who was claimed by the prosecution to be an eye witness to the incident.

(N) The accused was traced and produced before (PW 19) PI Patil on 6.30 P.M. on the same day and he was arrested under a panchanama (Exh.7). On his arrest the accused immediately expressed his willingness to make a statement. (PW 19) then called 2 panchas and in the presence of the panchas, the accused made a statement that he had concealed a blood stained knife as well as his blood stained clothes in the house of his cousin sister.

Panchanama relating to the statement made was prepared and signed by the panchas and PI Patil. In consequence of his voluntary statement, the panchas, the accused and the police proceeded towards Pashan and from the house of the cousin sister of the accused Fatimabi, from a row of pots in one corner of the room, the accused put his hands under the pots and took out a concealed knife. He also took out one black colour pant and khaki coloured bush shirt from under the cupboard and these three articles were then seized under a panchanama (Exh.37). On 20.3.1987, the Investigating officer recorded the statement of Neelkamal between 11.00 to 11.30 A.M. He also recorded the statement of six other witnesses including (PW 9) Umitra. He obtained the remand of the accused and while the accused was in police custody, he obtained 7 samples of the hand-writting of the accused under a panchanama (Exh.38). He sent the accused to Sasoon hospital for collection of his blood samples and on 25.3.1987 he examined (PW 6) Dr.Vasant Chaudhari who was a senior officer with HCL and secured the extract of the muster roll from his office which indicated that the accused was absent from his office on 19.3.1987. Then he sent all the muddemal articles through (PW 18) Police Constable Shinde to the Chemical Analyser’s office alongwith his forwarding letter. On 24.4.1987 he received the

post mortem notes. On 24.4.1987 he sent the chit found with the dead body of Lata and 7 samples of the hand-writing of the accused collected by him, to the office of the hand-writing expert alongwith a forwarding letter. On 4.6.1987 he recorded the supplimentary statement of (PW 12) Sheshrao Waghmare and 2 others and filed a charge-sheet on the same day i.e. 4.6.1987. This witness received the Chemical Analyser's report subsequently and produced the same before the court.

3. The defence of the accused as can be gathered from the suggestions put to the witnesses and from his 313 statement was of total denial. He contended that on 19.3.1987 he was not at Pashan where the incident had taken place but had gone to Kasar-wadi alongwith his mother and cousin sister. They had left Pashan at 9.30 A.M. in the morning and reached Kasar-wadi to attend the engagement ceremony of his cousin brother. That after the programme was over, they all returned back at about 6.00 P.M. He left his mother and wife at his NCL quarters and went back to Pashan to leave his cousin sister. At that time, he was accosted by the police. He denied that the clothes and knife seized by the police belonged to him.

4. At the trial, the prosecution examined as many

as 19 witnesses to prove its case. The prosecution also produced several documents in evidence. Defence did not examine any witness. Ultimately after perusing the entire material on record, the learned Additional Sessions Judge, Pune, passed the impugned Judgment and order convicting and sentencing the accused as aforesaid.

5. The star witness on whose evidence the prosecution case mainly rests is the daughter of the deceased (PW 10) Neelkamal. Neelkamal was at the time of the incident aged 12 years and studying in the 4th standard in NCL primary school. This witness stated that she knew the accused since last 2 to 3 years because he used to visit her house with her father. She stated that the accused used to visit their house in order to meet her mother in the absence of her father and even after her father objected to the accused visiting the house. She stated that sometimes accused used to visit their house in the morning and on some occasion used to visit at night also. She stated that on Holi day, the accused had come in front of their house in a drunken stage and started abusing her father. That her father had gone to the Security officer in order to complain against the accused who was abusing her father. During this incident, her mother Lata was inside the house but she did not step out of the

house. That the accused remained in front of their house from 12.00 noon till about 4.00 P.M. when the watchmen arrived at the scene and took him away. As regards the incident, she stated that on 19.3.1987 she had gone to her school at 7.30 A.M. and returned at about 12.00 noon from the school. That when she returned home, she found that her mother was at the Pan shop. She alongwith her brother and sister ate their meals and waited for their father. Her father did not come. At about 1.45 P.M. she carried the tiffin box for her mother to the Pan shop. However, when she reached the Pan shop, found that her mother was not there. She waited there for 5 minutes and ultimately went to the shop of (PW 12) Sheshrao, who was a fruit vendor and inquired from him as to where her mother had gone. The fruit vendor told her that her mother had a quarrel with the accused and she had gone to make a complaint against the accused in the NCL office. The fruit vendor took the tiffin box from Neelkamal and told her that he would hand over the tiffin box to her mother when she returned. Neelkamal after handing over the tiffin box to (PW 12) Sheshrao, then went to her school for drinking water. When she returned after about 10 minutes to the hand-cart of her mother, she saw the accused coming on the scene from the rear side of the said cart belonging to her mother. The accused pressed the mouth of her

mother. Her mother caught hold of the hair and shirt of the accused. At that time, the accused took out a knife and struck the knife blow on the stomach of Lata and another knife blow on her arm. Neelkamal on witnessing this incident became frightened. She turned and ran towards the house of her aunt Umitra. She told Umitra that accused Nasir had struck her mother with a knife. Umitra made her sit in her house and immediately rushed towards the pavement. This witness stated that at the time of the incident the accused was wearing a half sleeve khaki coloured shirt and full pant of black colour. She identified article-8 as the full pant and article-9 as being the shirt worn by the accused at the time of the incident. She also identified article-7 which was the knife used by the accused to assault her mother Lata. In her cross-examination, she admitted that she had never participated or heard the talk which used to take place between her mother and the accused. She admitted that she had never listened to any such talk. On omission from the police statement about her having seen the accused pressing the mouth of her mother with his right hand was brought on record. Similarly an omission in the police statement about her mother catching hold of hair and shirt of the accused was also brought on record. She admitted that when the accused attacked her mother with the knife there was

traffic of pedestrians on the road and some persons were also standing near the fruit shop of Waghmare. She admitted that she herself did not raise cries asking the accused not to hurt her mother. She denied that she had not seen the incident and that she was deposing against the accused because she was tutored.

6. Before we assess the evidence of the sole eye witness Neelkamal, it would be necessary to understand the nature of the evidence adduced by way of corroboration of the version given by the eye witness. This consists of 4 witnesses i.e. (PW 9) Umitra, the aunt of Neelkamal, (PW 11) Sahadeo Prasad, the uncle of Neelkamal, (PW 15) Jagdish, the father of Neelkamal and (PW 12) Sheshrao, the fruit vendor.

7. (PW 9) Umitra in her evidence stated that she alongwith the husband Sahadeo were residing on the first floor where the deceased Lata used to reside alongwith Jagdish and their 3 children. She states that the deceased Lata and the accused had a relationship with each other since 2 to 3 years and her brother-in-law Jagdish objected to the accused for coming to his house but the accused used to defy him and come to the house. Even Lata also objected to the accused for meeting her and yet accused used

to ignore her and visit the house, due to which there was a quarrel between Lata and the accused. She stated that on Holi day in 1987 she had seen the accused coming drunk to the house of Lata. The accused abused Lata and asked her to accompany him. That on 19.3.1987 at about 2.30 P.M. she was in her house. At about 2.30 P.M. Neelkamal came running to her house in a frightened stage and told her that the accused had stabbed her mother Lata. This witness pacified Neelkamal and asked her to sit in the house. She then rushed down to the wheel-cart of Lata and on reaching there, she found that Lata was dead and had sufferred a stab wound on her stomach. In her cross-examination, this witness admitted that it was a daily routine of Neelkamal to have a meal after returning from school and then sitting down for her studies. She admitted that in the month of March-1987 her school examination was about to start. She denied that the deceased Lata used to carry her own tiffin box everyday. her. She admitted that her statement was recorded by the police on the next day at 11.00 A.M. She denied that she had talked with Jagdish on the night of the incident. She admitted that she had not stated before the police that the deceased also prevented the accused from visiting their house.

8. (PW 11) Sahadeo stated in his evidence that the

relationship between Lata and the accused was friendly and it had developed in such a way that there was intimacy between them. That his brother Jagdish had told him about this relationship at the belated stage. That after some time accused and Lata started meeting each other secretely and on this account, there was a quarrel between Jagdish and accused. After this quarrel, Lata stopped meeting the accused but the accused continued to harass Lata. That on 19.3.1987 at about 3.00 P.M. his Section officer has informed him that his sister-in-law Lata had been murdered and that he should go to the spot of the incident. He immediately rushed to the spot of the incident and saw a huge crowd including some policemen present there. He saw Lata lying dead on the pavement near her cart. He saw that she had a bleeding injury on her stomach. The police recorded his complaint on the spot. He proved the contents of his complaint (Exh.23). In his cross-examination, this witness admitted that he did not like the fact that the accused had developed an intimacy towards his sister-in-law Lata. He admitted that he was on the spot of the offence from 3.30 P.M. till about 6.00 P.M. and that during this time at about 4.00 P.M. Jagdish came to the spot. He denied the suggestion that the accused had been involved because he did not like the illicit relationship between the

accused and Lata and out of suspicion.

9. (PW 15) Jagdish was the husband of Lata and the father of Neelkamal. He stated in his evidence that he knew the accused since the last 4 to 5 years. The accused used to visit his house alongwith him. The accused started talking with his wife Lata. Jagdish suspected that there was some illicit connection between the accused and his wife. The accused used to tell his wife that her husband was having an illicit connection with another lady and was thus trying to strain the relationship between him and his wife Lata. Jagdish warned his wife that they had 3 kids and it was not a happy situation that she was carrying on an illicit relation with the accused. Lata paid heed to this warning and stopped seen the accused. Accused continued to harass Lata. He stated that on the Holi day of 1987 the accused came to his house at about 1.30 P.M. and started abusing Lata. He complained to the Security officer of HCL and the said officer sent 2 watchmen and called the accused to meet him. That on 19.3.1987 from his office he had gone to a Co-operative bank near Alka talkies for some work. He returned back to Pashan at about 4.00 P.M. When he alighted at the PMT bus stop, he saw a huge crowd of persons which included policemen. He saw the dead body of his wife lying on the pavement and

noticed that a panchanama was in progress. Thereafter, the police removed the dead body of his wife to Sasoon hospital at about 5.30 P.M. Police made enquiries with him. He had been to the Sasoon hospital with the dead body and after the post mortem he brought the dead body home at 10.00 P.M. Funeral rites are performed on the dead body on the same night and the family members returned back from the funeral at 1.00 A.M. He identified the articles belonging to his wife i.e. her saree (article-11), her petty-coat (article-12), a blouse (article-13) and her brassier (article-14). In his cross-examination this witness admitted that in the beginning, he approved of the accused visiting his house. He stated that however, when the accused started going in a wrong direction, he raised an objection. He stated that he came to know about the illicit relationship between his wife and the accused in the month of March just 15 to 20 days prior to the incident. He stated that he had noticed that both of them were together in one room of his apartment at about 9.30 P.M. when he had come. He stated that the door of the room was locked. He knocked the door of the room. The accused came out of the room and left after 3 minutes. He admitted that he had not reported about this incident to the police and as the accused has rushed away he had not chased him. He stated that

he had met his daughter Neelkamal at 10.30 P.M. on 19.3.1987 when he brought back the dead body of Lata from the hospital. He further stated that he had talk with Neelkamal at 2.00 A.M. on the night of the incident. He denied that he tutored Neelkamal to give a statement to the police as per his say.

10. (PW 12) Sheshrao was the fruit vendor with whom Neelkamal claimed to have left the tiffin box for her mother. Neelkamal had also claimed that this witness was an eye witness to the incident. In the substantive evidence (PW 12) Sheshrao stated that his fruit shop was at a distance of about 100 feet from the wheel-cart of Lata. He stated that on the day of the incident, he had taken his meal and was sleeping under a tree on that day. On hearing shouts and a commotion he got up from his sleep but did not witness any incident. This witness was therefore, declared hostile. From the cross-examination of this witness it appears that the first statement of this witness was recorded on 19.3.1987 by the police and that his supplimentary statement was recorded on 4.6.1987 by the police i.e. after a delay of over 3 months and on the day that the police filed a charge-sheet. There is no contradiction brought on record vis-a-vis his statement dated 19.3.1987. It is therefore, clear that in his statement dated 19.3.1987 this witness

had not claimed to have seen the incident. In the cross-examination there are however, contradictions brought on record as regards virtually his entire statement dated 4.6.1987. A reading of this contradictions which are exhibited and marked as A & B indicate that the same pertain to the prosecution case about Neelkamal bringing a tiffin box to the spot of her mother's cart, including that of telling him about the whereabouts of her mother, about the telling by this witness to Neelkamal that Lata had gone to meet Mohandas, about Neelkamal leaving the tiffin box with him waiting for some time and then going towards NCL school, about Lata returning back and this witness handing over the tiffin box to Lata and thereafter going to sleep under a tree.

11. Having discussed the aforesaid evidence, we find that it will not be safe to rely upon the eye witness's evidence given by (PW 10) Neelkamal who was a child witness aged 12 years on the date of the incident. The reasons as to why we feel there exists a doubt about the veracity of the version given by her, can be summarised as follows :-

(a) That Neelkamal after witnessing the incident claims to have rushed to the house of her aunt and disclosed Umitra that she had seen the accused stabbing her mother Lata. Though Umitra in her

evidence corroborates this fact yet surprisingly Umitra did not claim to have disclosed about Neelkamal having seen the incident or about being told by Neelkamal about the accused having stabbed Lata either to her husband Sahadeo or even to the husband of the deceased Jagdish. It is her evidence that on hearing about the incident from Neelkamal she rushed down to the pavement where the dead body of Lata was lying. Her husband Sahadeo claims to have reached near the dead body of Lata at 3.30 P.M. Surprisingly, he does not depose to have found his wife Umitra at the spot. In his entire evidence Sahadeo does not state that Umitra told him about Neelkamal having witnessed the incident or about Neelkamal having disclosed anything about the incident to her. Sahadeo does not state that he himself made any enquiries with Umitra or even with Neelkamal before he lodged his complaint. On the contrary, it is his categorical statement that when he arrived at the spot, he found that members of the public and police were already gathered at the spot and that the police recorded his statement.

(b) From this state of affairs, it appears that when Sahadeo lodged his FIR (Exh.23) to the police he had neither talked with his wife Umitra nor with Neelkamal. Neither in his complaint nor in his substantial evidence before the court as he shed any

light as to how he came to know that Lata had been stabbed by the accused. The source of his knowledge relating to the incident has therefore, remained an unsolved mystery. Since his own house where he could have found both Umitra and Neelkamal was situated nearby, it would have been natural for Umitra and Neelkamal to have disclosed about the incident to (PW 11) Sahadeo who was the first male member of the family present at the spot. The evidence however, does not disclose any such disclosure by either Umitra or Neelkamal.

(c) (PW 15) Jagdish, the husband of the deceased admittedly came to the spot of the incident at about 4.00 P.M. Seeing his wife dead at the spot, it would have been natural for him to make some enquiries as to how and why this incident had occurred. Jagdish does not claim to have made any such enquiries or enquired about the whereabouts of his 3 children including Neelkamal. He does not state that either Umitra or Sahadeo who was present alongwith him on the spot informed him that his wife was stabbed by the accused. He claimed that he met his daughter when he brought back the dead body of his wife at 10.30 P.M. Even at this stage Neelkamal does not claim to have made any disclosure to her father Jagdish or uncle Sahadeo. Jagdish in his evidence further goes to state that he had a talk

with Neelkamal only after the funeral at 2.00 P.M. Even at this stage, he has not stated anything about Neelkamal having disclosed to him about her having witnessed the incident and disclosing about the same to her aunt (PW 9) Urmila.

(d) The fact that (PW 12) sheshrao did not support the prosecution case and stuck to his version first given to the police on 19.3.1987, which version confirmed to his substantive evidence in court is another factor which militiates against the prosecution. It appears from the evidence of (PW 12) Sheshrao that his statement was recorded on 19.3.1987 i.e. on the same day of the incident and he had not claimed to be an eye witness. Since there is no contradiction of his substantive evidence with the statement dated 19.3.1987 it would be safe to infer that he had not supported the story of Neelkamal coming there with the tiffin box, leaving the tiffin box with him, going to school and about the tiffin box being handed over by her to Lata. We have noted that the concerned Investigating officer had chosen to record a completely different version of this witness in the supplimentary statement dated 4.6.1987, almost 2 to 2 & 1/2 months after the incident. That this should have been done on the last day when the charge-sheet was filed and that the prosecution was required to

have brought on record the contradictions as regards its own case when this witness did not support the prosecution, in the circumstances of this case does not militiate against the truthfulness of this witnesses but is a pointer towards the untruthfulness of the prosecution version relating to (PW 10) Neelkamal being an eye witness to the incident of assault.

(e) In a sense, Neelkamal is also a chance witness. Her aunt Umitra admitted that her normal routine was returning from school, taking her meal and then getting down to her studies. It was suggested by the defence that deceased Lata used to take her own tiffin. This version seems to be natural because if Neelkamal who was the eldest girl aged 12 years was leaving the house early at 7.30 A.M., only Lata would have been left to cook her lunch and it would be more natural for her to carry her tiffin box once her lunch was cooked. She would also have to ensure that the lunch of Neelkamal would be ready by the time when she returned from the school. It is not the prosecution case that Neelkamal used to come back and cook lunch for herself, other children and her parents.

(f) If the version of Neelkamal and the prosecution case that (PW 12) Sheshrao had handed over the

tiffin box received by him from Neelkamal to Lata is to be believed then the tiffin box should have been found at the scene of the offence. There is no reference to any such tiffin box lying there though the police seemed to have immediately come to the spot. That tiffin box was never found at any stage of the investigation.

(g) That Neelkamal in her cross-examination stated that when she witnessed the incident there were many pedestrians passing by. There were labourers present and some persons were standing at the shop of the fruit vendor. In fact, she claimed that the fruit vendor is an eye witness. Unfortunately, though independent evidence seems to have been available, no such independent witness was examined by the the prosecution.

12. If the evidence of the eye witness Neelkamal is found to be unsafe to be believe, what remains are the other circumstances and it would therefore, be necessary to see if the other circumstances are proved as independent links and form a complete chain, which can form the basis of a conviction. The chain of circumstances should be such as would eliminate all other hypothesis indicating innocence.

13. The first circumstance relied upon by the

prosecution is that the accused had a strong motive to commit the crime. From the evidence of (PW 9) Umitra, (PW 10) Neelkamal and (PW 11) Sahadeo, it is evident that the accused and deceased Lata were on friendly terms. The written note said to have been found by the police on the person of the deceased Lata is another piece of evidence which at the highest can indicate that Lata and the deceased were on intimate terms. The husband of Lata, Jagdish stated in his examination-in-chief that he had a suspicion that his wife Lata was on imtimate terms with the accused. In his cross-examination the defence brought on record an incident where he had found the accused being closetted with Lata in his own house behind a closed door 15 to 20 days prior to the incident. Further in the cross-examination he specifically denied that his wife and accused were not on intimate terms. The erratic behaviour of the accused on the day of Holi in 1987 also points to a fact that the accused was under an impression that he was being denied the companionship of Lata and was upset about this fact. The fact that even on the day of the incident the accused had harassed Lata and Lata had in fact gone to (PW 3) Mohandas, Security officer to lodge a complaint is another fact which indicated that the accused had continued to harass Lata. Nodoubt, the Advocate for the defence argued that the illicit

relationship between Lata and the accused was a reason for Lata's husband to assault him and could not be a reason for the accused to assault. In the present case however, the evidence indicates that Lata had discontinued the illicit relationship on a warning given by her husband and it was not the illicit relationship that was a bone of contention at the time of the incident but the discontinuation of the same that was causing anguish to accused. In our view, it cannot be said from the evidence on record that there was no motive for the accused to have committed the crime. However, motive by itself would not sufficient to secure a conviction and we must consider if there are other supporting circumstances which form further links in order to complete the chain of circumstantial evidence.

14. Once such other link sought to be established by the prosecution was the discovery of a blood stained knife and the blood stained clothes of the accused at the behest of the accused. We have perused the discovery evidence and find that the same suffers from several discrepencies which reduce the weight that can be attached to this evidence. These discrepencies are as follows :-

(a) The memorandum statement and the consequent discovery and seizure were made under a panchanama,

witnessed by 2 independent panchas. The first panch appears to be university student (PW 4) Anil Bhosale. At the relevant time he was staying in the university hostel and studying for his M.A. part-I. He however, states that on 19.3.1987, he was called to act as a panch in the police station at 7.00 P.M. The other panch Sambhaji Nalawade was also present. He and his friends at that time were playing volley ball on the ground near the police station. The police however, obtained his signature on a blank paper and another on a written paper. He did not support the discovery of the weapons or clothes and was therefore, declared hostile. In his cross-examination, he denied the prosecution case which was brought on record by way of a contradiction. The other panch (PW 5) Sambhaji Nalavade appears to be a person who is in service. He denied that he saw the accused in the police station and stated that the police obtained his signature on the panchanama. The discovery evidence is therefore, bereft of any support in the substantial evidence of the 2 panchas. The prosecution was then left with the task of getting the said panchanama proved through the Investigating officer (PW 19) PI Patil. It is no doubt true that it is open for the prosecution, in law to prove the contents of the panchanama through the evidence of the Police officer who has witnessed the making of

the panchanama. However, when the panchas do not support the panchanama signed by them, the legal weight that can be given to this evidence stands reduced.

(b) In the present case there is a further discrepency between the panchanama and the substantial evidence of (PW 19) PI Patil relating to the discovery. The substantial evidence of PI Patil is to the effect that the knife was concealed below a verticle row of pots in one corner of the room of the cousin sister of the accused. He stated that the accused put his hand under-neath these pots, took out the concealed knife and produced it before him. This fact is not corroborated by the panchanama which indicates that the knife was under a cupboard in the house.

(c) The weight that can be given to this circumstance is further reduced due to the fact that though human blood was found on the knife the blood group could not be determined. The blood found on the articles of the deceased as well as in the blood taken from the dead body was of ‘O’ group.

(d) The prosecution did not bring on record the blood group of the accused which would have been helpful in eliminating doubt in so far as the blood

stained clothes of the accused were concerned.

. In our view, all the aforesaid factors substantially weaken the circumstance relating to discovery and at the highest, this can be said to be a weak link in the chain of circumstances.

15. The 3rd circumstance sought to be established by the prosecution was the fact that on 19.3.1987 when (PW 14) Dattatraya Shitole was in his cycle shop the accused who was well known to him, came to him in a frightened state and confessed to him that he had a quarrel and beat one women. Unfortunately, this witness did not support the prosecution and there is nothing in his evidence which would enable the prosecution to contend that this extra judicial confession can be said to be reliably proved.

16. The fourth circumstance relied upon by the prosecution is that the accused was absent from his work on the day of incident i.e. 19.3.1987. This is sought to be proved through the evidence of (PW 6) Dr.V.R.Chaudhari. No doubt, this evidence would indicate that accused was not present at his place of work. That by itself would not lead to the inference that he was the assailant.

17. In view of what has been discussed here-in-above, we feel that this is a case where the

benefit of doubt may be given to the accused.

18. In the circumstances, the appeal is allowed. The Judgment and order dated 27.5.1988 passed by the Additional Sessions Judge Pune in Sessions Case No.380/87 and the conviction and the sentence imposed upon the accused is quashed and set aside and the accused is acquitted of all charges. The bail bonds of the accused shall stand cancelled forthwith.

(S.S.Parkar,J)

(R.S.Mohite,J)